

COVID-19 & Youth Detention: The Global Pandemic Exposes the Need for Alternatives

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Since the establishment of the Cook County Juvenile Court in 1899, the country's first justice system uniquely designed for children, the American juvenile justice system has endured a 120-year odyssey that has produced progressively rational, largely unsympathetic, and increasingly punitive practices that have long-term effects on youth.¹ The harm caused to children ages 10-17 (hereinafter referred to as "youth") who are detained, via life interruptions, re-traumatization, and inconsistent access to rehabilitative resources, outweighs any possible benefit related to detention.²

There is an immediate need for holistic and intentional reform to the juvenile system. Many advocates for justice-involved youth have been calling for complete divestment from the use of detention centers, recommending home and community-based models as alternatives.³ Prison abolitionists have also long advocated for decreased reliance on juvenile detention, and now research regarding the damaging nature of and need to reform the juvenile system has become increasingly recognized and made available to the public.⁴ Some progress regarding decarceration of the juvenile system is reflected in federal guidelines mandating protections for detained youth.⁵ While a few jurisdictions have been successful at dramatically reducing the rates of juvenile detention, widespread abolition and implementation of a holistic community-based approach has not yet been achieved.⁶ Though Cook County may have a history of pioneering pathways for improved procedures in the justice system, we now find ourselves in a pandemic, a long way from abolition and in dire need of trauma-informed harm reduction efforts.

There is ample research and anecdotal evidence showing that, despite the juvenile system claiming to prioritize rehabilitation over punitive treatment, justice-involved youth have worse mental and physical health outcomes.⁷ Even outside of the current COVID-19 global pandemic,

¹ Scott Wm. Bowman, *The Kids are Alright: Making a Case for Abolition of the Juvenile Justice System*, 26 CRIT. CRIMINOLOGY 393 (2018).

² Wendy Sawyer, *Youth Confinement: The Whole Pie 2019*, PRISON POLICY INITIATIVE, Dec. 19, 2019, available at <https://www.prisonpolicy.org/reports/youth2019.html>.

³ *Id.*; Barry Holman and Jason Ziedenberg, *The Dangers of Detention: The Impact of Incarcerating Youth in Detention and Other Secure Facilities*, JUSTICE POLICY INSTITUTE, at 19, available at http://www.justicepolicy.org/images/upload/06-11_rep_dangersofdetention_ji.pdf.

⁴ *Id.*; See Dana Schoenberg, *How State Reform Efforts Are Transforming Juvenile Justice*, PEW, Nov. 26, 2019, available at <https://www.pewtrusts.org/en/research-and-analysis/articles/2019/11/26/how-state-reform-efforts-are-transforming-juvenile-justice>.; See Mon Mohapatra, *Abolitionists Want You to Imagine a Better World Beyond the Ballot Box*, BAZAAR, Nov. 11, 2020, available at <https://www.harpersbazaar.com/culture/politics/a34589742/abolition-joe-biden-election/>.

⁵ Wendy Sawyer, *supra* note 2.

⁶ *Id.*

⁷ *Id.*; Mariame Kaba, *Juvenile Justice in Illinois: A Data Snapshot*, PROJECT NIA, April 2014, at 2, available at http://www.steansfamilyfoundation.org/pdf/Juvenile_Justice_in_Illinois.pdf; Amanda Klonsky, *The Lifelong Damage We Do in Cook County When We Jail Kids as Young as 10*, Nov. 7, 2019, available at

formerly incarcerated youth already faced disproportionate morbidity and mortality rates compared with their noninvolved counterparts.⁸ Youth who are returning from juvenile detention, homeless, and/or in foster care are also more likely to be educationally disadvantaged and pushed out of school.⁹ As young people, this population is continually faced with compounded social vulnerabilities that hinder opportunities for success.¹⁰

Moreover, the U.S. juvenile justice system both incarcerates a far greater proportion of its youth than any other developed country and disproportionately targets youth of color.¹¹ International standards for juvenile justice call for prioritizing the interests of youth, and only depriving youth of their liberty as a last resort.¹² Per federal guidance, "...the purpose of juvenile detention is to confine only those youth who are serious, violent or chronic offenders... pending legal action."¹³ Nonetheless, at any point in time in 2019, over 48,000 youth involved in delinquency or criminal systems in the U.S. were confined.¹⁴ Nearly 17,000 of them were being held in juvenile detention centers.¹⁵ Of the 17,000 youth, most were being held pretrial for a nonviolent offense or for no criminal activity at all.¹⁶

Disparities in youth arrests necessarily prompt the overrepresentation of Black and brown youth in the juvenile system. In 2018, despite a reduction in youth arrests, one child was arrested every 43 seconds in the U.S.- 728,280 youth.¹⁷ In categories of crimes where white and Black youth have similar rates of commission, Black youth are more likely to be arrested.¹⁸ In Chicago, although there has been a downward trend in juvenile arrests, Black youth, mostly young Black boys, still account for nearly 80% of youth arrested.¹⁹ Since the emergence of COVID-19,

<https://chicago.suntimes.com/2019/11/7/20953943/cook-county-juvenile-temporary-detention-center-jtdc-child-offenders-audy-home-amanda-klonsky>.

⁸ Elizabeth S. Barnert et al., *How Does Incarcerating Young People Affect Their Adult Health Outcomes?*, PEDIATRICS, Feb. 2017, available at <https://pediatrics.aappublications.org/content/pediatrics/139/2/e20162624.full.pdf>

⁹ *The State of America's Children 2020*, CHILDREN'S DEFENSE FUND, 2020, available at <https://www.childrensdefense.org/wp-content/uploads/2020/02/The-State-Of-Americas-Children-2020.pdf>.

¹⁰ *Id.*

¹¹ Elizabeth S. Barnert et al., *supra* note 7; Mariame Kaba, *supra* note 8.

¹² *Justice for Children: Detention as A Last Resort*, UNICEF, 2020, available at https://www.unicef.org/spanish/protection/files/Justice_for_Children_Detention.pdf (citing <https://info.nicic.gov/dtg/node/4>).

¹³ Wendy Sawyer, *Youth Confinement: The Whole Pie*, PRISON POLICY INITIATIVE, Feb. 27, 2018, available at <https://www.prisonpolicy.org/reports/youth2018.html>.

¹⁴ Wendy Sawyer, *supra*, note 1.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Supra* note 9.

¹⁸ Barry Holman and Jason Ziedenberg, *supra* note 5 at 18.

¹⁹ Mariame Kaba, *supra* note 8 at 9.

overall arrests have decreased during the pandemic but authorities in Chicago have continued to arrest and detain young Black people.²⁰

Youth detention, mirroring the adult criminal legal system, is marred by racial disparities.²¹ Nationwide, while Black and Latinx youth represent only 16 percent of the overall population ages 10-17, they make up 67 percent of youth detained in any kind of residential placement.²² Thus, youth detention centers, like the Cook County Juvenile Temporary Detention Center (JTDC), have the potential to be COVID-19 hot-spots that disproportionately harm Black and brown youth.²³ Currently, JTDC's primary function is to detain Cook County youth that have pending cases.²⁴ On a typical day before the pandemic, JTDC housed more than 300 majority-Black youth ranging in age from 10-17 years.²⁵ In 2018, upon admission, 70% of all youth admitted to JTDC were Black, 14% were Latinx and only 10% were white.²⁶ Throughout the pandemic, there have been widespread efforts to hold more frequent detention review hearings to support increased youth releases. Nationally, white youth are being released at a quicker rate than their Black peers.²⁷ This results in an increased gap in the racial demographics

²⁰ See Amanda Vinicky, *'We Will Shut You Down': Lightfoot Warns of Arrests for Party Hosts During Pandemic*, WTTW, May 2, 2020, available at <https://news.wttw.com/2020/05/02/we-will-shut-you-down-lightfoot-warns-arrests-party-hosts-during-pandemic>; See also *Mayor threatens party-goers with arrest as virus toll mount*, AP NEWS, May 3, 2020, available at <https://apnews.com/article/1eb44a27ff61290a500e9eb3bcb575fa>.

²¹ *Id.*

²² The State of America's Children 2014, CHILDREN'S DEFENSE FUND, 2014, available at <http://www.childrensdefense.org/child-research-data-publications/state-of-americas-children/>.

²³ Andy Thompson, *City of Chicago Announces Plan for Mass Arrest and Detention of Youth Over Holiday Weekend*, WORLD SOCIALIST WEB SITE, July 2, 2020, available at <https://www.wsws.org/en/articles/2020/07/02/chic-j02.html>; John Garcia, *Chicago Parties Amid COVID-19 Pandemic Could Result In Citations, Arrests, Even Jail*, Lightfoot Warns, ABC 7 EYEWITNESS NEWS, available at <https://abc7chicago.com/chicago-coronavirus-illinois-lori-lightfoot-today/6150627/>.

²⁴ Mariame Kaba, *supra* note 8 at 13.

²⁵ Amanda Klonsky, *supra* note 8; See *Juvenile Temporary Detention Center*, COOK COUNTY GOVERNMENT, 2020, available at <https://www.cookcountyil.gov/agency/juvenile-temporary-detention-center>; See also *Illinois Juvenile Justice Commission*, JMIS Monthly Data Report, April 2020, at 5., available at <http://ijjc.illinois.gov/sites/ijjc.illinois.gov/files/assets/April%202020%20JMIS%20Monthly%20Data%20Report%20Updated%205-6-2020.pdf>; See also Center for Prevention & Research Development, *JMIS Monthly Data Report*, April 2020, at 5, available at <http://ijjc.illinois.gov/sites/ijjc.illinois.gov/files/assets/April%202020%20JMIS%20Monthly%20Data%20Report%20Updated%205-6-2020.pdf>.

²⁶ *Circuit Court of Cook County Performance Metrics Department 440 - Juvenile Temporary Detention Center*, CIRCUIT COURT OF COOK COUNTY, June 1, 2018, available at <http://www.cookcountycourt.org/Portals/0/Chief%20Judge/Court%20Statistics/JTDC/440%20JTDC%20-%20Q2%202018.pdf>

²⁷ *Youth Detention Admissions Remain Low, But Releases Stall Despite COVID-19*, ANNIE E. CASEY FOUNDATION, July 8, 2020, available at <https://www.aecf.org/blog/youth-detention-admissions-remain-low-but-releases-stall-despite-covid-19/>; Erica L. Green, *'Pacing and Praying': Jailed Youths Seek Release as Virus Spreads*, THE NEW YORK TIMES, Apr. 14, 2020, <https://www.nytimes.com/2020/04/14/us/politics/coronavirus-juvenile-detention.html>.

of youth held in detention centers and leaves primarily Black youth reliant on the justice system to provide sanitary and safe services during this pandemic.²⁸

The novel coronavirus has exposed the structural racism embedded in various systems within our country, contributing to significant health disparities.²⁹ Recognition of these inequities and disparate access to resources needed for individual success and liberation is central to the understanding of potential consequences of the institutionalization of youth in detention centers during a pandemic. Compared to other youth, those involved in the juvenile justice system are disproportionately more likely to be youth of color and to have compromised immunity, asthma, and other underlying health conditions that put them at higher risk for developing acute COVID-19 complications.³⁰ Nationally, COVID-19 has infected more than 1,800 youth and more than 2,500 staff in detention centers, residential treatment facilities, and other juvenile justice settings.³¹ Since the pandemic emerged in March, Cook County's JTDC has confirmed dozens of positive COVID-19 tests among both their staff members and youth.³² The unnecessary exposure of youth to a confined space within a detention center and thus to COVID-19, combined with the persistent disparities in the juvenile justice system, exacerbates racial inequities and public health concerns.

Youth are often detained because they've been determined to be either a threat to public safety or likely to reoffend.³³ Many of these youth have already survived adverse and traumatizing experiences during their lifetime and may thus present with symptoms of Post-Traumatic Stress Disorder.³⁴ It is often assumed that these youth will therefore benefit most from institutionalization because of the mental health services and structure offered by a detention center.³⁵ For detention to be beneficial, however, it must promote healing and provide the support necessary for restoration.³⁶ To achieve this, it is necessary for those working with youth

²⁸ *Id.*

²⁹ Malaika Jabali, *The Coronavirus Has Laid Bare The Reality of America's Racial Caste System*, THE GUARDIAN, May 27, 2020, <https://www.theguardian.com/commentisfree/2020/may/27/coronavirus-america-racial-caste-system>.

³⁰ See Mana Golzari, *The Health Status of Youth in Juvenile Detention Facilities*, 38 JOURNAL OF ADOLESCENT HEALTH 776 (2006).

³¹ Josh Ravner, *Youth Justice Under the Coronavirus: Linking Public Health Protections with the Movement for Youth Decarceration*, THE SENTENCING PROJECT, Sep. 30, 2020, available at <https://www.sentencingproject.org/publications/youth-justice-under-the-coronavirus-linking-public-health-protections-with-the-movement-for-youth-decarceration/>.

³² See Chicago tribune Staff, *Coronavirus in Illinois updates: Here's what happened Oct. 29 with COVID-19 in the Chicago area*, CHI. TRIBUNE, Oct. 29, 2020, available at <https://www.chicagotribune.com/coronavirus/ct-covid-19-pandemic-chicago-illinois-news-20201029-fourcwggbsrh6sq35iwct2la-story.html>.

³³ Rebecca Vivrette, *Trauma-Informed Strategies for Supporting Youth in the Juvenile Justice System during COVID-19*, CHILD TRENDS, Sep. 30, 2020, available at <https://www.childtrends.org/publications/trauma-informed-strategies-for-supporting-youth-in-the-juvenile-justice-system-during-covid-19>.

³⁴ *Id.*

³⁵ *Id.*

³⁶ Sue Burrell, *Trauma and the Environment of Care in Juvenile Institutions*, NAT. CHILD TRAUMATIC STRESS NET., Aug. 2013, at 2, available at https://www.nctsn.org/sites/default/files/resources/trauma_and_environment_of_care_in_juvenile_institutions.pdf.

in detention centers to understand how youth who have experienced trauma must be supported if they are to recover.³⁷ Some of those working in detention centers have not experienced trauma themselves and are consequently unfamiliar with both the ways that it may present and how to best address youth productively and without causing re-traumatization.³⁸

It is also necessary for detention administrators and staff to understand the ways that the COVID-19 pandemic may cause youth to be even more susceptible to re-traumatization as a result of heightened levels of anxiety and prolonged periods of isolation.³⁹ In Cook County, youth who come in from the community are quarantined for fourteen days after intake, even having to eat in isolation, to prevent the spread of COVID-19.⁴⁰ This same practice of a two-week quarantine is followed once again, if a child attends an in-person court hearing during the pandemic.⁴¹ Juvenile detention centers must make the emotional and physical health of admitted youth a priority, yet some of the recommended practices create challenges because they appear at odds with public health practices.⁴² Youth should always be addressed with an empathetic and trauma-informed approach while detained, but during this global health crisis it is even more essential. The American Academy of Pediatrics (AAP) has set forth tangible steps that can be taken by juvenile justice administrators to help promote resilience and safety among youth being served during a pandemic.⁴³

Youth in detention centers must be protected from each other and the potential transmission of COVID-19, yet the AAP advises that institutions cease the use of isolation and solitary procedures due to the lasting extreme harm that the practice can inflict on the developing youth.⁴⁴ Staggered activities outdoors that adhere to social distancing as well as ensuring that youth have the opportunity to see other people and stay mentally active should be utilized.⁴⁵ Additionally, the AAP recommends that youth in confinement have easy and unlimited access to family members and predesignated support individuals by way of video chat or phone.⁴⁶ Next, educational materials and access to virtual schooling must be made available to prevent the further disparities of youth who are experiencing interruptions in their learning while being

³⁷ Rebecca Vivrette, *supra* note 29.

³⁸ *Id.*; Sue Burrell, *supra* note 32 at 3.

³⁹ Sue Burrell, *supra* note 32 at 4-5.

⁴⁰ Zoom Interview with a Cook County juvenile justice advocate who wishes to remain anonymous (Oct. 23, 2020). *See also supra*

⁴¹ Telephone interview with Cook County juvenile justice advocate who wishes to remain anonymous (Nov. 12, 2020).

⁴² Rebecca Vivrette, *supra* note 29.

⁴³ *Responding to the Needs of Youth Involved With the Justice System During the COVID-19 Pandemic*, AMERICAN ACADEMY OF PEDIATRICS, Aug. 25, 2020, available at <https://services.aap.org/en/pages/2019-novel-coronavirus-covid-19-infections/clinical-guidance/responding-to-the-needs-of-youth-involved-with-the-justice-system--during-the-covid-19-pandemic/>.

⁴⁴38 *Id.*

⁴⁵ Rebecca Vivrette, *supra* note 29.

⁴⁶40 *Supra* note 37.

detained.⁴⁷ Resources for virtual schooling must be accessible to youth at all times, including during the intake quarantine. Finally, youth in detention must have access to effective legal representation and timely court proceedings to ensure their release from detention.⁴⁸

COVID-19 has reduced the number of youth in detention, both by diverting youth from entering institutions and through more frequent detention reviews.⁴⁹ The harm being inflicted upon youth who enter or remain in detention, however, cannot be overlooked. It should not require a global pandemic for reduced rates of detention, consideration of alternatives to institutionalization, and timely access to legal proceedings. It is hoped that the heightened attention regarding decisions to detain youth as well as trauma-centered detention services continue beyond the pandemic. Youth become adults. The cycle of incarceration is hard to break. We must create and implement sustainable alternatives to detention, providing each child with equitable access to restoration and individual success. When youth are detained, especially during a pandemic, it is essential that equitable trauma-informed services are provided.

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ Barry Holman and Jason Ziedenberg. *supra* note 3.